

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

AYODELE OKE,

Plaintiff,

v.

DEPUTY GARMAN, et al,

Defendants.

No. 3:18-cv-00310

(Senior Judge Rambo)

(Magistrate Judge Carlson)

ORDER

MARCH 20, 2019

Ayodele Oke, a Pennsylvania state prisoner, has filed a 42 U.S.C. § 1983 complaint alleging that numerous defendants violated his rights by failing to provide timely dental treatment. (ECF No. 1). Oke raises an Eighth Amendment deliberate indifference claim and various state law claims. (*Id.* at 24-74). Defendant Nurse Ficks has filed a motion to dismiss (ECF No. 23), as have Defendants Mark Garman, Deputy McMahon, Deputy Houser, Major Haldeman, Ted Williams, Robert Kazlaski, Dr. Italia, Captain Probst, Dr. Trejada, Lt. Hoover, and Lt. Vance (Collectively “Department of Corrections Defendants”) (ECF No. 19).

On January 22 and 25, 2019, Magistrate Judge Martin C. Carlson issued two separate Reports and Recommendations. (ECF Nos. 28, 29). In the first, Magistrate Judge Carlson recommends that this Court grant Ficks’ motion to dismiss and

dismiss all claims against her without prejudice. (ECF No. 28). The second Report and Recommendation recommends that the Court grant Department of Corrections Defendants' motion to dismiss with respect to Garman, McMahon, Haldeman, Houser, Probst, Vance, and Hoover, but deny the motion with respect to Williams, Kazlaski, Italia, and Trejada. (ECF No. 29). No timely objections were filed.

Where no objection is made to a report and recommendation, this Court will review the recommendation only for clear error. Fed. R. Civ. P. 72(b), advisory committee notes; *see Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987) (explaining that court should in some manner review recommendations regardless of whether objections were filed). Regardless of whether timely objections are made, district courts may accept, reject, or modify—in whole or in part—the magistrate judge's findings or recommendations. 28 U.S.C. § 636(b)(1); Local Rule 72.31. The Court has reviewed the record and finds no clear error. Consequently, it is hereby ordered that:

1. Magistrate Judge Martin C. Carlson's Reports and Recommendations (ECF Nos. 28, 29) are hereby ADOPTED in their entirety;
2. Department of Corrections Defendants' motion to dismiss (ECF No. 19) is DENIED as Williams, Kazlaski, Italia, and Trejada, but GRANTED in all other respects. Claims against Garman, McMahon,

Haldeman, Houser, Probst, Vance, and Hoover are DISMISSED without prejudice;

3. Ficks' motion to dismiss (ECF No. 23) is GRANTED, and all claims against her are DISMISSED without prejudice;
4. Oke may file, within 30 days of the date of this Order, an amended complaint addressing the deficiencies identified in the Reports and Recommendations. The Court will construe a failure to timely file an amended complaint as an election by Oke to proceed only on the remaining claims.

BY THE COURT:

s/Sylvia H. Rambo
Sylvia H. Rambo
Senior United States District Judge